

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Refer Reply To:
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Date: June 12, 2009

LEGEND

X =

Trust =

State =

Date 1 =

Date 2 =

Year =

Dear :

This responds to a letter dated January 13, 2009, submitted on behalf of X, requesting a ruling under § 1362(f) of the Internal Revenue Code.

FACTS

According to the information submitted, X was incorporated on Date 1 under the laws of State. X elected to be treated as an S corporation effective Date 2. Prior to Date 2, shares of X were transferred to Trust. X represents that Trust complies with the requirements for a qualified subchapter S trust (QSST) under § 1361(d)(3). However, the beneficiary of Trust inadvertently failed to timely file a QSST election for Trust. The failure to file a QSST election for Trust was discovered in Year. Additionally, the trustee

of Trust, not the beneficiary, signed the consent for Form 2553, Election by a Small Business Corporation. As a result of the failure to file a QSST election for Trust, as well as the fact that the consent form was signed by Trust's trustee rather than its beneficiary, X's S corporation election was ineffective.

X represents that there was reasonable cause for the failure to file a QSST election for Trust and for the failure of the beneficiary of Trust to sign the consent form for the S election. X further represents that these failures were inadvertent oversights and were not motivated by tax avoidance or retroactive tax planning. X further represents that X has treated itself consistent with being an S corporation since Date 2 and that the beneficiary of Trust has consistently included her distributive share of X's income on her federal income tax returns for the year of the invalid election and for all subsequent years as if Trust had timely filed a QSST election. Finally, X and its shareholders agree to make any adjustments required by the Secretary consistent with the treatment of X as an S corporation.

LAW AND ANALYSIS

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1) defines a "small business corporation" as a domestic corporation that is not an ineligible corporation and that does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than one class of stock.

Section 1361(d)(1) provides that a QSST whose beneficiary makes an election under § 1362(d)(2) will be treated as a trust described in § 1361(c)(2)(A)(i), and the QSST's beneficiary will be treated as the owner (for purposes of § 678(a)) of that portion of the QSST's S corporation stock to which the election under § 1362(d)(2) applies. Under § 1361(d)(2)(A), a beneficiary of a QSST may elect to have § 1361(d) apply. Under § 1361(d)(2)(D), this election will be effective up to 15 days and two months before the date of the election.

Section 1361(d)(3) defines a QSST as a trust (A) the terms of which require that (i) during the life of the current income beneficiary, there shall be only one income beneficiary of the trust; (ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary; (iii) the income interest of the current beneficiary in the trust shall terminate on the earlier of the beneficiary's death or the termination of the trust; and (iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to that beneficiary;

and (B) all of the income (with the meaning of § 643(b)) of which is distributed (or required to be distributed) currently to one individual who is a citizen or resident of the United States.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which it was made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the event resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the required shareholder consents, and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the information submitted and the representations made, we conclude that X's S election was ineffective because Trust was an ineligible shareholder due to the failure of Trust's beneficiary to make a QSST election and to consent on behalf of Trust to X's election to be an S corporation. In addition, we conclude that the ineffectiveness was inadvertent within the meaning of § 1362(f). Therefore, X will be treated as an S corporation from Date 2, and thereafter, provided that X's S corporation election was otherwise valid and was not otherwise terminated under § 1362(d).

This ruling is conditioned on Trust's consent to X's S election, signed by Trust's beneficiary, being filed with the appropriate service center, indicating that the consent is to be associated with the originally filed Form 2553, within 60 days of this letter.

This ruling is further conditioned on the beneficiary of Trust filing a QSST election for Trust with the appropriate service center, effective Date 2, within 60 days of the date of this letter. A copy of this letter should be attached to the consent and to the QSST election. This letter ruling will be null and void if these conditions are not satisfied.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed concerning whether X is otherwise eligible to be an S corporation, or whether Trust is otherwise eligible to be a QSST.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

David R. Haglund

David R. Haglund
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for § 6110 purposes